

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0020
Withholding Tax
Responsible Officer
For the Years 2001-2002

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ISSUES

I. Withholding Tax-Responsible Officer Liability

Authority: IC 6-3-4-8(f), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270 (Ind. 1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

Taxpayer was a fifty percent shareholder in a corporation in which Taxpayer worked as an outside salesman. During the period ending in September 2001, Taxpayer's spouse handled bookkeeping and payroll for the corporation, with Taxpayer signing the relevant checks. Beginning in October 2001, Taxpayer did not sign any checks with the exception of his own payroll check and one other check. However, withholding taxes were not remitted to the Department for a period of several months, which resulted in an assessment against Taxpayer as a responsible officer of the corporation. Taxpayer protested the assessment, and a hearing was held.

I. Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Pursuant to Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270 (Ind. 1995) at page 273: “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.” The factors considered to determine whether a person has such authority are the following:

1. The person’s position within the power structure of the corporation;
2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and
3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

With respect to the first aspect, Taxpayer was a fifty-percent owner of the company, and was listed as the secretary of the corporation in Secretary of State filings. With respect to the second aspect, the file and Taxpayer are silent. With respect to the third aspect, Taxpayer was still a signatory to the corporation’s bank accounts until at least April 2002, even though the only checks signed by Taxpayer were his own payroll checks. Taxpayer still had the authority to write checks and provide for payments by the corporation of its liabilities, even if the corporation had actual control over the physical checks. Taxpayer had the opportunity to pay the relevant taxes from the corporation’s accounts, but did not do so. Accordingly, Taxpayer is personally responsible for the taxes in question.

Taxpayer has provided an affidavit with respect to the situation. However, Taxpayer’s affidavit does not provide sufficient information to conclude that Taxpayer lacked the ability to make corporate withholding tax payments at the time of the liabilities at issue.

FINDING

The taxpayer’s protest is denied.